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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.J., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSHUA J.,

Defendant and Appellant.

D061778

(Super. Ct. No. SJ12219)

APPEAL from a judgment of the Superior Court of San Diego County, Michael Martindill, Juvenile Court Referee. Reversed and remanded with directions.

Father Joshua J. appeals the April 13, 2012 judgment terminating his parental rights to his son, J.J. Joshua correctly contends that although he told the San Diego County Health and Human Services Agency (the Agency) that he might have Indian ancestry through his "maternal grandmother" and "grandparents," the Agency made no

further inquiry pursuant to the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.); there was no ICWA notice; and the juvenile court found ICWA did not apply.

The Agency requests augmentation of the record on appeal with a copy of a report (the report) signed by a social worker sometime in September 2012.<sup>1</sup> The Agency incorrectly asserts the copy is certified. According to the report, on August 30, 2012, (1) Joshua said he had thought he had Indian heritage, but after asking his mother, he realized he did not; (2) Joshua's mother said her great-grandmother had Indian heritage, tribe unknown; and (3) Joshua's maternal grandmother "stated that her mother told her that her great-grandmother was Indian," tribe unknown. The Agency requests dismissal of the appeal as moot because Joshua no longer claims Indian heritage. Alternatively, the Agency concedes the ICWA inquiry was insufficient and requests a limited remand for a proper ICWA inquiry. Joshua opposes the Agency's requests for augmentation and dismissal, and asks for a limited remand.

We deny the Agency's request for augmentation of the record. Furthermore, the Agency's assertion of mootness is patently without merit. Because family members " 'are not necessarily knowledgeable about tribal . . . membership and their interests may diverge from those of the tribe' " (*In re Mary G.* (2007) 151 Cal.App.4th 184, 212, quoting *In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1425), a relative's statement that the family lacks sufficient information to determine Indian heritage does not absolve the

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<sup>1</sup> The report lists September 5, 2012, as the date of execution, but the date September 12 follows the social worker's signature.

Agency of its duty to provide ICWA notice (*In re Damian C.* (2009) 178 Cal.App.4th 192, 199).

#### DISPOSITION

The judgment terminating parental rights is reversed. This case is remanded to the juvenile court, with directions to order the Agency to conduct a proper ICWA inquiry, give any required ICWA notice and file all required documentation with the court. If, after proper notice, a tribe claims J.J. is an Indian child, the court shall proceed in conformity with ICWA. If, on the other hand, no tribe claims J.J. is an Indian child, the judgment terminating parental rights shall be reinstated.

McCONNELL, P. J.

I CONCUR IN THE RESULT:

HUFFMAN, J.

I CONCUR:

AARON, J.